IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24/01/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 15900 of 2002
and
W.P.M.P.No. 21284 of 2002 and W.V.M.P.No.1273 of 2002

The Music Academy,
represented by its
Executive Trustee,
168, T.T.K. Road, Chennai-14. .. Petitioner.

-Vs-

1. Inspector General of Registration,
Santhome High Road,
Chennai-600 028.

2. District Registrar of Audit and
Enquiry Officer, Chennai Central,
Chennai-1.

3. R. Parthasarathy.
(R-3 impleaded as per order of Court
dated 17-12-2002 in WPMP No.51537/2002). .. Respondents.

Petition under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, as stated therein.

For Petitioner : Mr. Mohan Parasaran, Senior counsel for Mr. Sathish Parasaran

For respondents 1 and 2 : Mr. R. Muthukumaraswamy, Additional Advocate General, assisted by Mr. D. Krishnakumar, Special Govt.,Pleader

For 3rd respondent : Mr. T.V. Ramanujam, Senior counsel for Mr. T.V. Krishnamachari.

:ORDER

By consent of all the parties main writ petition itself is taken up for

disposal. Aggrieved by the proceedings of the Inspector General of Registration, Chennai-28/first respondent herein, dated 19-3-2002 and the report of the District Registrar of Audit and Enquiry Officer, Chennai-1, dated 29-1-2002, the Music Academy, Chennai-14, through its Executive Trustee has filed the above writ petition to quash the same, and consequently forbear the respondents from proceeding any further with any civil or criminal proceedings.

2. The case of the petitioner-Music Academy is briefly stated hereunder: The petitioner is a well known premier organization for promotion of fine arts, music and culture. The petitioner society was founded way back in the year 1929 and the same was registered as a society under the Societies Registration Act, 1860. The petitioner has also been recognized as a public charitable institution for the purpose of Section 80(G) of the Income Tax Act and sections 11, 12, 13 of the Indian Companies Act, 1961. It transpires that one S.M. Sundaram and few other members appear to have made a complaint to the respondents about the functioning of the petitioner questioning the validity of certain bye-laws including the legality of the Executive Committee, the Governing body of the Music Academy. There were certain other allegations pointing out certain financial irregularities. The validity of certain bye-laws were unsuccessfully challenged by one member by name P. Venugopal, who has instituted C.S.No. 487 of 2001 seeking for various reliefs and which is pending on the file of this Court. As regards the affairs of the society, certain complaints were made to the effect that the returns of the society were not filed for 10 years and that resolutions and amendment to the bye-laws have not been legally carried out and there is an attempt to seek exemption with regard to filing of returns from the provisions of the Tamil Nadu Societies Registration Act. There were also some accusation of financial irregularities in the matter of provision of false ceiling to the auditorium and other matters. Based on the objections received from time to time and in an unprecedented manner, the respondents have proceeded to unilaterally come to the conclusion that the affairs of the petitioner are indeed not being carried on in consonance with the provisions of the Tamil Nadu Societies Registration Act and there are certain financial irregularities, even without conducting any enquiry, deeply affecting not only the petitioner institution, but also the respectable members holding responsible office in the petitioner academy.

3. It is further stated that the second respondent based on the proceedings of the first respondent dated 7-11-2001, sent a report dated 29-01-2002 to the latter. It appears from the enquiry report dated 29-1-2002 that the said proceedings were in the nature of directions by the first respondent to the second respondent to conduct an enquiry under Section 36 of the Tamil Nadu Societies Registration Act, which empowers the Registrar to enquiry into the affairs of the registered society on his own motion or on the application of the majority of the members of the committee of the registered society or on the application of not less than 1/3rd of the members of the registered society. Only 19 members of the academy, out of a total number of 1524 members which do not constitute the required number of members on whose application the respondents can act. The very initiation of enquiry was therefore void ab-initio. Based on the ex parte enquiry conducted by the 2nd

respondent, several precipitative actions have been taken including filing of a criminal complaint for petty offence for non filing of returns, against the President of the Academy in C.C.No. 2734 of 2002 on the file of the XI Metropolitan Magistrar, Saidapet, for a petty offence under Section 46 (2) of the Tamil Nadu Societies Registration Act. The enquiry has been conducted hurriedly in an unfair manner with some hidden agenda. Without giving an opportunity to the affected persons/persons concerned, the 2nd respondent has proceeded to observe that the academy has not informed these transactions to its members, even though the General body had approved these transactions. All the findings by the respondents have been given, even without verification of the facts from the academy. Certain financial irregularities have also been pointed out in the report which has been complied with. The petitioner is aggrieved by the action taken by the respondents, inspite of giving 60 days time to the petitioner to rectify the so-called defects. In view of the action taken including the prosecution initiated against the President, having no other effective remedy, filed the present writ petition questioning the same.

4. Inspector General of Registration, Chennai-28/ first respondent herein has filed a counter affidavit wherein it is stated that in a petition dated 3-10-2001 addressed to Government by one S.M. Sundaram and others, some irregularities have been alleged regarding financial management and functioning of the academy. The District Registrar, Central Chennai made a preliminary review on the complaints and submitted a report to Inspector General of Registration on 6-1 1-2001. Upon the receipt of the report, the Inspector General of Registration who is also the Registrar of Societies, defined under Section 2 (i) of the Tamil Nadu Societies Registration Act, 1975, had taken a decision on his own motion to institute an enquiry, and accordingly ordered an enquiry under section 36 (1) of the said Act in to the affairs of the society. The District Registrar (Audit), Chennai Central was nominated as the enquiry officer, who submitted his report to the Inspector General of Registration on 29-1-2002, pointing out various irregularities. In view of pendency of the civil suit, it was decided that no further action was required at present in respect of deemed inconsistency in byelaws relating to activities of the Board of Trustees. However, in respect of other lapses, the society was directed to set right the same within two months. The District Registrar, Central Chennai was asked to take appropriate action to prosecute the society for its violation of section 12 (3), (4) of the Act by way of enforcing the amendment of byelaws without getting filing it with the District Registrar and also for not filing of returns. Apart from the complaint dated 12-6-2001 of S.M. Sundaram, one R. Parthasarathy, P. Venugopal and Babu and others in their separate petitions dated 11-6-2001 have made some allegations and pointed out certain irregularities in the affairs of the academy and also regarding rejection of nomination filed by them to contest the election held on 24-6-2001 . The District Registrar, Chennai (Central) has made preliminary review on the complaints and submitted his report on 6-11-2001, stating that the society has not filed the returns for the last 10 years and some irregularities were found in the financial management. Only after considering the gravity of the irregularities in the preliminary report of the District Registrar, Chennai (Central), it was decided by Inspector General of Registration on his own motion to order for an enquiry under section 36 (1) of

the Tamil Nadu Societies Registration Act, 1975. Accordingly an enquiry under section 36 (1) was ordered, nominating the District Registrar (Audit), Chennai (Central) as the enquiry officer. The enquiry officer, after conducting enquiry, gave his report on 29-1-2002. Only after examination of the report, the Inspector General of Registration came to the conclusion that the affairs of the society are not being carried on in consonance with the provisions of the Act. The first respondent did not unilaterally come to the above said conclusion instantly on receipt of petitions as alleged by the petitioner. The enquiry has been initiated on the own motion of Inspector General of Registration. Even the decision to institute an enquiry under section 36 (1) was taken only after preliminary enquiry was made on the complaints. Hence, there is no necessity to follow the formula of 1/3 number of members. The enquiry was conducted on various dates. Depositions were obtained. Hence, it cannot be contended that the enquiry was held behind back. Section 46 (2) enjoins that any registered society, which defaults in complying with any of the requirements of the Act, which includes filing of returns shall be punishable with fine. The direction given under section 36 (9) of the said Act for setting right the lapses cannot be construed that the petitioner society is absolved from prosecution under Section 46 (2).

5. The impleaded third respondent has stated that the petitioner academy is not functioning as per the provisions of the Tamil Nadu Societies Registration Act, 1975 and the Rules framed thereunder, and the bye-laws are not in consonance with the provisions of the Act. It is evident from the enquiry report that the writ petitioner has not even filed returns for nearly ten years. A perusal of the enquiry report will clearly show that the petitioner in the writ petition has no locus standi to file the above writ petition. The petitioner has been directed to rectify the defects which they have not done.

6. In the light of the above pleadings, I have heard Mr. Mohan Parasaran, learned senior counsel for the petitioner/academy, Mr. R. Muthukumaraswamy, learned Additional Advocate General for respondents 1 and 2, and Mr. T.V. Ramanujam, learned senior counsel for third respondent.

7. Mr. Mohan Parasaran, learned senior counsel for the petitioner, after taking me through the proceedings of the first respondent dated 19-3-2002 and the report of the second respondent dated 29-1-2002, has raised the following contentions:

(i) The respondents have acted in violation of Section 36 of the Tamil Nadu Societies Registration Act while enquiring into the affairs of the petitioner, inasmuch as the complaint upon which the respondents have acted has not given by the requisite number of members, namely, not less than 1/3rd members as mandated under the Act;
(ii) The enquiry report by the second respondent and the subsequent

communication by the first respondent calling upon the petitioner to cure the deficiencies pointed out in the report has been made without affording a hearing or an opportunity to the petitioner;

(iii) The first respondent has assumed that there are instances of financial

mismanagement and has made sweeping statements in his communication dated 19-3-2000 without hearing the persons concerned;

(iv) The report and the consequential proceedings are contrary to the orders passed by this Court.

On the other hand, Mr. R. Muthukumraswamy, learned Additional Advocate General appearing for respondents 1 and 2, would contend that since the first respondent has initiated action suo motu and ordered an enquiry under Section 36 (1) of the Tamil Nadu Societies Registration Act to the affairs of the society, it is unnecessary to verify whether not less than one-third members have submitted their complaint. He also contended that the writ petition itself is not maintainable, since the impugned report of the second respondent and the proceedings of the first respondent are based on the fact finding enquiry under Section 36 and the petitioner academy can very well comply with the same or point out if anything is wrong. He further contended that the enquiry officer examined the persons concerned, verified the records in order to find out the affairs of the Academy and submitted a report. Based on the report, the first respondent issued the impugned proceedings for compliance. He also contended that since the report was made on the perusal and verification of the records and after hearing the person in charge of the affairs of the academy, there is no violation of principles of natural justice as claimed. Mr. T.V. Ramanujam, learned senior counsel for the third respondent, would contend that the impugned proceedings are only report based on the verification of the records, minute books, audit book, etc., the same cannot be questioned in this Court; hence interference by this Court at this stage is not called for; accordingly the present writ petition itself is misconceived and not maintainable.

8. I have carefully considered the rival submissions.

9. Though initially S.M. Sundaram and others submitted a petition dated 3-10-2001, highlighting certain irregularities in the financial management and functioning of the academy, on receipt of the preliminary review made by the District Registrar, Chennai ( Central), the Inspector General of Registration-first respondent, who is also the Registrar of Societies under Section 2 (i) of the Tamil Nadu Societies Registration Act, 1975, have taken a decision on his own motion to initiate an enquiry, and accordingly ordered for an enquiry under Section 36 (1) of the said Act in to the affairs of the society, the first contention that one-third of the members of the Society have not made a complaint falls on the ground. There is no dispute that sub-section (1) of Section 36 of the said Act enables the Registrar to enquire into the affairs of a registered society of his own motion or on the application of a majority of the members of the committee of that registered society or on the application of not less than one-third of the members of that registered society. Since the first respondent exercised his suo motu power by ordering an enquiry in to the affairs of the petitioner society, the question whether an application of not less than one-third members of the society does not arise, accordingly I reject the first contention.

10. Before considering other contentions, it is useful to refer hereunder the

relevant provisions from the Tamil Nadu Societies Registration Act, 1975 (hereinafter referred to as "the Act") and the Tamil Nadu Societies Registration Rules, 1978 (hereinafter referred to as "the Rules"):

"Section 2(g) "officer" includes any trustee, director, manager, treasurer, secretary, assistant secretary or member of the committee, or any person authorised in this behalf by the bye-laws of the registered society to bring or defend or cause to be brought or defended any action or other legal

proceeding touching or concerning any property, right or claim of the registered society or any other person empowered under its bye-laws to give direction in regard to the business of the registered society;

(h) "registered society" means a society registered or deemed to be registered under this Act;

(i) "Registrar" means the Inspector-General of Registration appointed under sub-section (1) of section 3 of the Registration Act, 1908, or the Registrar of a district appointed under section 6 of that Act or any person authorised by the Government to exercise all or any of the powers of the Registrar under this Act;

Section 12 (3) An amendment of the memorandum or the byelaws shall be registered and on such registration shall take effect from the date of the passing of such special resolution."

Section 16 speaks about accounts and audit of the registered society.

"Section 27. A copy of every special resolution for any of the purposes mentioned in this Act, signed by an officer of the registered society, authorised in this behalf by its bye-laws shall within such period as may be prescribed from the passing of the resolution, be filed with the Registrar.

36. (1) The Registrar may, of his own motion or on the application of a majority of the members of the committee of a registered society or on the application of not less than one-third of the members of that registered society, or if so moved by the District Collector, hold or direct some person authorised by Registrar or by order in writing in this behalf to hold, an enquiry into the constitution, working and financial condition of that registered society.
(6) A person holding an enquiry under this section shall at all reasonable times have free access to all the books, accounts and documents of the registered society, and shall have power to call upon the registered society and the officers of the registered society to produce such books, accounts and documents and furnish such statements and other information in relation to its business as he may direct.
(9) The result of the inquiry shall be communicated to the registered society and to the applicants, if any, and if the Registrar is satisfied that the result of the inquiry does not warrant action under section 37, he may issue such direction to the registered society, or any member of the registered

society, as the Registrar may deem fit."

Section 37 enables the Registrar to cancel the registration based on enquiry held under Section 36. Section 38 speaks about cancellation of registration of a society carrying on unlawful activities.

Section 46 (2) Any registered society which makes default in complying with any of the requirements of this Act or contravenes any of the provisions thereof and every officer of the registered society who is knowingly a party to the default or contravention, shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing default or contravention with fine which may extend to fifty rupees for every day during which the default or contravention continues.

Rule 22. Time for filling the documents specified in clause (a) of sub-section (3) of section 16.- The documents specified in clause (a) of sub-section (3) of section 16 shall be placed before the general meeting within six months after the expiration of the financial year to which the accounts relate. The documents and the declaration specified in clause (b) of sub-section (3) of section 16, shall be filed by the society with the Registrar within six months after the date of such general meeting."

11. In the light of the above provisions, before considering the other contentions, let us find out the impugned proceedings which are under challenge in this writ petition. The petitioner seeks to quash the proceedings of the Inspector General of Registration-first respondent herein dated 19-3-2002. The said communication dated 19-3-2002 merely says that on the direction given by Inspector General of Registration in his proceedings dated 7-11-2001, an enquiry under section 36(1) of the Act was conducted by the District Registrar (audit), Chennai (Central). It further says that after enclosing the copy of the report along with the result of the enquiry report pointing out various irregularities including non-filing of the returns, inconsistency of bye-laws to the provisions of the Act, enforcement of amended bye-laws without getting it registered with District Registrar, financial mismanagement and about the activities of the board of trustees, as provided under sub-section (9) of Section 36 of the Act, the first respondent herein requested the Secretary of the petitioner academy to set right such lapses mentioned in the report within 2 months from the date of receipt of the said letter. The other proceeding which is sought to be quashed is the report of the 2nd respondent dated 29-1-2002. It is the report of the District Registrar (audit) and enquiry officer, Chennai (Central) submitted to the Inspector General of Registration, Chennai-28, first respondent herein. As rightly argued by Mr. R. Muthukumaraswamy, learned Additional Advocate General for respondents 1 and 2 and Mr. T.V. Ramanujam, learned senior counsel for third respondent, the proceedings of the 2nd respondent dated 29-1-2002 is only a report sent to the Registrar of Societies, namely, Inspector General of Registrar, first respondent herein. Unless the person concerned, namely, Inspector General of Registration passes an order based on the said report or initiates action, the report simpliciter of the 2nd respondent cannot be canvassed in this proceedings. In other words, ultimately it is the decision/order of the first respondent which can be

considered by this Court. Likewise, even in the proceedings dated 19-3-2002, the first respondent has not passed any order, except pointing out certain irregularities in the affairs of the petitioner society and making a request to set right the lapses within 2 months from the date of receipt of a copy of the said letter. Here again, as rightly pointed out, it is for the petitioner society to comply with the defects, if any, or set right the lapses as mentioned in the report. In case, the directions of the 1st respondent could not be complied with or rectified, the same can be informed to the first respondent. Instead of resorting to such procedure, the petitioner rushed to this Court for a Writ of Certiorarified Mandamus.

12. There is no dispute that petitioner is a registered society under the Societies Registration Act, 1860 and continued to be governed by the provisions of the present Act. By virtue of Section 2 (i) of the Act, the first respondent-Inspector General of Registration is the Registrar of the Societies. Sub-section (1) of Section 12 enables the registered society to amend the provision of its memorandum relating to the objects of the registered society to carry on the administration, more economically or more efficiently by new or improved means, to amalgamate with any other registered society and to divide itself into two or more societies. Sub-section (2) of Section 12 enables a registered society by special resolution, amend its bye-laws. Sub-section (3) of Section 12 mandates that an amendment of the memorandum or the bye-laws shall be registered and on such registration shall take effect from the date of the passing of such special resolution. Section 27 enables the society that a copy of every special resolution for any of the purposes mentioned in the Act, signed by an officer of the registered society, authorised in this behalf by its bye-laws shall, within such period, as may be prescribed from the passing of the resolution, be filed with the Registrar. I have already referred to Rule 22 of the Rules which prescribes time for filing documents specified in clause (a) of sub-section (3) of Section 16. Rule 26 compels the society to file a copy of the special resolution with the Registrar within 3 months from the date of passing of such resolution. Though it is unnecessary for this Court to go into the reports submitted by the second respondent dated 29-1-2002, in the light of the statement made across the Bar, I have verified the contents of the same. The perusal of the report shows various irregularities such as non-filing of returns, inconsistency of bye-laws to the provisions of the Act, enforcement of the amended bye-laws without getting it registered with the District Registrar, mismanagement and the activities of the board of trustees which are not only against the provisions of the Act and the Rules, but also to the bye-laws and the interest of the society. There is no dispute regarding the power and functions of the Registrar, first respondent herein in the affairs of the societies. In view of various defects pointed out in the report by the 2nd respondent, the first respondent, by the impugned proceedings dated 19-3-2002, called upon the petitioner to set right the lapses. No doubt, the petitioner society was granted 2 months' time from the date of receipt of the proceedings to set right the lapses. More over, steps have been taken for prosecution of the President of the petitioner academy for violation of Section 12 (3), (4) of the Act. I have already referred to sub-section (2) of Section 46 which makes it clear that any registered society which makes default in complying with any of the requirements of the Act or contravenes any of the provisions thereof

and every officer of the registered society who is knowingly a party to the default or contravention, shall be punishable with fine which may extend to one hundred rupees. Inasmuch as several contraventions or defaults have been admitted, I am of the view that the respondents 1 and 2 are within their powers in initiating prosecution before the appropriate forum against the President of the society. However, it is made clear it is open to the President or the person concerned against whom prosecution has been initiated to putforth their defence in the said forum which are available under law.

13. Coming to the contention that sweeping conclusion has been arrived at by the 2nd respondent without affording opportunity and enquiry etc., here again the perusal of the report of the 2nd respondent dated 29-1-2002 clearly shows that the persons who were actually in the affairs of the society were examined by the 2nd respondent. They were given opportunity to put-forth their case or explain the reason for committing default or contravention or non-compliance of the provisions of the Act, Rules and bye-laws. It is also seen that the enquiry officer, 2nd respondent herein, verified the records maintained by the society. It is not the case of the petitioner that all the persons who are members are to be given opportunity. On the oother hand, the report shows that the persons who were in charge of the accounts or affairs of the society were enquired and they were given opportunity to put-forth their defence/stand. There is no dispute that respondents 1 and 2 can very well verify the records, books and accounts of the petitioner society at any time. Here, after notice to the persons concerned, the records/account books were verified and defects were noted as irregularities.

14. Though it is stated that the conclusion of the enquiry officer is contrary to the order of this Court, the perusal of the materials would show that the civil suit in C.S.487/2001 pending before this Court relates to acceptability of bye-laws 12 (e), 19, 26, 35 and 36. After stating that in view of the pendency, no action was required at present in respect of deemed inconsistency in bye-laws relating to activities of the boards of trustees, in respect of other lapses, the society was directed to set right; accordingly there is no substance in the said contention.

15. The above discussion clearly shows that the statement made in the report cannot be canvassed in a writ proceedings and I am satisfied that the writ petition is liable to be dismissed. However, in view of the fact that both sides cited decisions in support of their respective stand, I shall refer the same. Mr. Mohan Parasaran, learned senior counsel for the petitioner, has referred to a decision in BARIUM CHEMICALS LTD. v. COMPANY LAW BOARD, reported in AIR 1 967 Supreme Court 295. The said decision arose under the Companies Act. In the light of the factual position therein, Their Lordships have held that before the discretion conferred by Section 237 (b) of the Companies Act, 1956, to order an investigation can be exercised, there must exist circumstances which in the opinion of the Authority suggest what has been set out in sub-clauses, (i), (ii) or (iii). By pointing out another decision in KARUPPIAH, P. v. THE DEPUTY REGISTRTAR OF CO-OPERATIVE SOCIETIES, reported in 1989 Writ L.R. 272, it is contended that duties and obligations must be first established before a person could be found guilty of wilful negligence, resulting in being charged therefore and found guilty in

disciplinary proceedings. It is seen from the decision that the duties and obligations are not specifically defined and delineated, one could not pin down the culpability of breach thereof on the person concerned. The Court has further held that this aspect could not be a matter of concrete materials.

16. In ARIVANANDHAPANDIAN, K. AND ANOTHER v. NADAR MAHAJANA SANGAM, ETC., reported in 1994 Writ L.R. 779, a Division Bench of this Court, after referring to the fact that inquiry under Section 36 of the Act has got all the trappings of a judicial proceedings, the District Registrar is required to record evidence and failure to hold inquiry constitutes violation of the provisions of the Act and liable to be quashed. The other two decisions, namely, ARIGNAR ANNA WEAVERS CO-OP. SOCIETY LTD., v. STATE OF T.N (AIR 1999 Madras 254); and SAMBANDAM v. THE DEPUTY REGISTRAR (CREDIT) CO-OP.SOCIETIES, MYLAPORE, MADRAS (1999 M.L.J. 310) relate to action taken under the Tamil Nadu Co-operative Societies Act for "wilful negligence", which is not in the case on hand. Accordingly, those decisions are not helpful to the petitioner's case. Though learned senior counsel for the petitioner has relied on a decision in KUMAON MANDAL VIKAS NIGAM LTD., v. GIRJA SHANKAR PANT, reported in (2001) 1 Supreme Court Cases 182 with reference to scope of fairness in action and bias, in view of the factual details available and the stage at which the petitioner has filed the writ petition, I am of the view that it is unnecessary to refer the details and the ultimate conclusion arrived at therein. With reference to the decisions cited by the learned senior counsel for the petitioner, I have already referred to the power vested on the Registrar of Societies, first respondent herein; enquiry by the second respondent to all persons who are concerned with the affairs of the petitioner's society, his verification of society's records, the opportunity given by him to the persons concerned to put-forth their case, etc. I have also referred to the fact that except the action under Section 46 (2) for non submission of returns for the past 10 years, no other steps have been taken against the petitioner Society by the first respondent. On the other hand, the first respondent has requested the petitioner society to set right the lapses within the time fixed. In these circumstances, I am of the view that the decisions relied on by the learned senior counsel for the petitioner are not helpful to their stand.

17. Though it is vehemently contended by Mr. Mohan Parasaran, learned senior counsel for the petitioner, that as per subsection (2) of Section 36 of the Act, the very initiation of enquiry is ultra vires, I have already referred to the fact that the Registrar has initiated on his own motion under sub-section (1) of Section 36. In VARADARAJAN, N. (CO-OP. SUB-REGISTRAR) SPECIAL OFFICER v. STATE OF TAMIL NADU, reported in 2001 (4) CTC 339, several contentions have been raised with regard to initiation of proceedings under Tamil Nadu Co-operative Societies Act including Section 81. It is relevant to note that Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 is similar to section 36 of the Tamil Nadu Societies Registration Act, 1975.Seciton 81 of the Tamil Nadu Co-operative Societies Act gives powers to hold an enquiry into the constitution, working and financial condition of a registered society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice, or mismanagement in relation to that society. When similar attack was made, the Division Bench,

while rejecting the said contention, has held that, (para 22)

"22?.. The learned counsel all the time centered round the power under Sec.81 and its possible misuse. Perhaps because that is a common thread in all these petition. It cannot again be ignored that under Sec.91 of the Act all that is required to be done is only the inquiry regarding the constitution, working and financial condition of the society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, etc. in relation to the society. It is only when such inquiry is completed that the subsequent quasi-punitive eventualities like an action under Seciton 92 or the surcharge proceedings under Section 87 may follow. There are inbuilt guidelines in Seciton 82 as well as Seciton 87 also and the orders passed for levying and recovering the surcharge under Section 87 is again made appealable under Section 152. Therefore, merely because any other officer is allowed to enjoy a power under Section 81, it does not mean that it is an "excessive delegation" in his favour. We are, therefore, convinced that the said Government Order cannot be deemed to be a piece of "excessive delegation" and there is nothing wrong if such officers exercise the powers under Section 81 of either himself conducting the inquiry or authorising some other officer to conduct the same after taking a decision to "initiate" the inquiry. It must be remembered here that the discretion to initiate an inquiry under Section 81 lies only with the "Registrar" or such "other officver" who is conferred with the power by the impugned Government Order. Though this power can be exercised suo motu, there is also further check that these powrs could be exercised on application of majority of the Board members or of not less than one-third of the members or on the request of the financing bank or of the District Collector. This provision also, therefore, works as a check on the so-called untrammelled discretion of the "Registrar" or as the case may be the "other officers" who have been clothed with the powers of the Registrar to initiate inquiry and to authorise any other officer to conduct the same. In that view, we must hold that in clothing the "other officers" with the powers of the Registrar, there is no excessive delegation by the State Government nor is there any impermissible sub-delegation. The language of the latter part of Section 3 and Section 81 is enough to repel the contention?."

In the light of the language used in both the provisions, as rightly contended by the learned Additional Adovocate General, the statutory provisions enable the Registrar to initiate enquiry either on his own motion or on the application of majority of members of the committee or on the application of not less than one-third members of the society, call for a report from other officers like the second respondent and issue direction to the society to set right the defect and also initiate appropriate action including prosecution for non-compliance.

18. To sum up the Registrar has power either of his own motion or on the application of the majority of the committee or on the application of not less than one-third members to enquire into the affairs of the registered society. Pursuant to the said power, the Registrar appointed the District Registrar (audit) Chennai Central as an enquiry officer and directed him to enquire into the affairs of the society. The enquiry officer after enquiring the persons concerned who were actually dealing with the affairs of the society and after

verifying the records, audit report, etc., submitted his report to the Inspector General of Registration on 21-9-2002. The enquiry report revealed that there were certain irregularities, such as some of the provisions of the bye-laws are not in consonance with the Tamil Nadu Societies Registration Act and the Rules, amended bye-laws have been brought into force without getting the approval of the Registrar which attracts prosecution under section 46 (2) of the Act, the society has not filed annual returns with the Registrar for the past 10 to 14 years and the Board of Trustees which should act like Advisory Body has grabbed vital powers of the committee. Though the enquiry officer has not examined all the persons, his report reveals that the persons who were actually in the affairs of the society were enquired, by giving them opportunity to put-forth their case and records were verified. I am also satisfied that the direction of the Inspector General of Registration to the petitioner Society under Section 36 (9) is not a punishment meted out on the society. On the other hand, it is mere a direction to the society to set right the irregularities as mentioned in the enquiry report. The direction of the Inspector General of Registration dated 19-3-2002 which is impugned in this writ petition is in accordance with sub-section (9) of Section 36 and I hold that the first respondent has not exceeded his powers conferred on him. Like wise, in the light of the above discussion, I am satisfied that on the direction of the 1st respondent-Registrar, the 2nd respondent conducted enquiry in the affairs of the petitioner society and after affording reasonable opportunity to the persons concerned, submitted his report, hence the same cannot be interfered at this juncture. I have already held that the action taken against the petitioner Society in the form of criminal prosecution is for non-compliance of the Act and it is for the society or the persons concerned including the President to put-forth their defence before the proper forum. In the light of what is stated above, I am of the view that the report of the second respondent dated 29-1-2002 and the communication of the first respondent dated 19-3-2002 are in accordance with the Act and the Rules and there is no ground for interference by this Court at this stage. The Writ Petition deserves to be dismissed; accordingly dismissed with the above observation. No costs. Consequently, W.P.M.P.No. 2 1284/2002 and W.V.M.P.No.1273/2002 are closed.

R.B.
Index:- Yes.
Internet:- Yes.

To:-

1. Inspector General of Registration,
Santhome High Road,
Chennai-600 028.

2. District Registrar of Audit and
Enquiry Officer, Chennai Central,
Chennai-1.

□